

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 935

By: Jett

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5
6 AS INTRODUCED

7 An Act relating to schools; providing certain
8 legislative recognition; amending 70 O.S. 2021,
9 Section 24-157, which relates to a prohibition on the
10 instruction of certain concepts; creating the Stop
11 the Wrongs to Our Kids and Employees (Stop W.O.K.E.)
12 Act; providing short title; defining terms; expanding
13 concepts which are prohibited from being part of a
14 course; prohibiting in public schools the use of
15 certain supplemental instructional materials;
16 providing for enforcement; allowing certain civil
17 action and establishing awards; allowing the
18 dismissal of school officials, officers, and
19 employees who knowingly commit certain violation and
20 directing that they be declared in violation of
21 certain oath; prohibiting certain defense; providing
22 certain construction; prohibiting certain
23 discrimination; allowing certain civil action and
24 establishing awards; providing for affirmative
25 defense; providing for certain construction of act;
26 providing for noncodification; providing for
27 codification; providing an effective date; and
28 declaring an emergency.

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30 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

31 SECTION 1. NEW LAW A new section of law not to be
32 codified in the Oklahoma Statutes reads as follows:

33 The Legislature hereby recognizes the following findings:
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1 1. The United States Constitution is not silent as to how
2 government actors in this state shall respond and react to critical
3 race theory for the matter arises under the Establishment Clause and
4 the Free Exercise Clause of the First Amendment to the United States
5 Constitution;

6 2. The Establishment Clause of the First Amendment to the
7 United States Constitution states that the government "shall make no
8 law respecting an establishment of religion," and Article II,
9 Section 5 of the Oklahoma Constitution states, "Public money or
10 property - Use for sectarian purposes. No public money or property
11 shall ever be appropriated, applied, donated, or used, directly or
12 indirectly, for the use, benefit, or support of any sect, church,
13 denomination, or system of religion, or for the use, benefit, or
14 support of any priest, preacher, minister, or other religious
15 teacher or dignitary, or sectarian institution as such";

16 3. The Free Exercise Clause of the First Amendment to the
17 United States Constitution states that the government "shall make no
18 law...prohibiting the free exercise [of religion]";

19 4. The Establishment Clause of the First Amendment applies to
20 this state through the Fourteenth Amendment, and the United States
21 Supreme Court held in *Hein v. Freedom From Religion Foundation Inc.*,
22 551 U.S. 587 (2007) that the Establishment Clause applies to the
23 executive branch, which includes Oklahoma public schools;

1 5. All that religion amounts to is a set of unproven answers to
2 the greater questions like "why are we here", what gives us
3 identity, what should we be doing as humans, and what happens after
4 death;

5 6. The Establishment Clause of the United States Constitution
6 was never solely designed to prohibit the government from respecting
7 and recognizing the doctrines of institutionalized religions but of
8 non-institutionalized religions, such as secular humanism;

9 7. The United States Supreme Court found that secular humanism
10 is a religion for the purposes of the First Amendment in cases such
11 as:

- 12 a. *Torcaso v. Watkins*, 367 U.S. 488 (1961),
- 13 b. *School District of Abington Township, Pa. v. Schempp*,
14 374 U.S. 203 (1963),
- 15 c. *United States v. Seeger*, 380 US 163 (1965), and
- 16 d. *Welsh v. United States*, 398 U.S. 333 (1970);

17 8. Most of the United States courts of appeals have found that
18 secular humanism is a religion for purposes of the First Amendment
19 in cases such as:

- 20 a. *Malnak v. Yogi*, 592 F.2d 197 (3d Cir.1979),
- 21 b. *Theriault v. Silber*, 547 F.2d 1279 (5th Cir.1977),
- 22 c. *Thomas v. Review Bd.*, 450 U.S. 707 (1981),
- 23 d. *Lindell v. McCallum*, 352 F.3d 1107 (7th Cir.2003),

1 e. Real Alternatives, Inc. v. Sec'y Dep't of Health &
2 Human Servs., 150 F. Supp. 3d 419, 2017 WL3324690 (3d
3 Cir. Aug.4, 2017), and

4 f. Wells v. City and County of Denver, 257 F.3d 1132
5 (10th Cir. 2001);

6 9. Religious experts have testified under oath that critical
7 race theory is a doctrine, orthodoxy, ideology, and dogma that is
8 part of a worldview consisting of a series of unproven faith-based
9 assumptions and naked assertions that is implicitly religious and
10 inseparably linked to the religion of secular humanism;

11 10. Regardless of political affiliation, all members of the
12 Legislature and all executive and judicial officers are bound by
13 oath to put their own political and religious beliefs aside and to
14 comply with their duty to honor their oath of office pursuant to
15 Article VI, Clause 3 of the United States Constitution to uphold the
16 United States Constitution and to, therefore, immediately stop
17 creating, respecting, and enforcing policies that promote the
18 plausibility of critical race theory because all of those policies
19 fail all three prongs of the lemon test established by the United
20 States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971) for:

21 a. constituting non-secular shams that lack a primary
22 secular purpose,

23 b. cultivating indefensible legal weapons against non-
24 observers of the religion of secular humanism, and

1 c. serving to excessively entangle the government with
2 the religion of secular humanism;

3 11. The United States Supreme Court in *Edwards v. Aguillard*,
4 482 U.S. 578 (1987) and *Agostini v. Felton*, 521 U.S. 203 (1997)
5 found that if government action fails one prong of the lemon test,
6 it is unconstitutional, and the evidence shows that the enforcement
7 and creation of policies in public schools that respect critical
8 race theory fail all three prongs of the lemon test;

9 12. The United States Supreme Court in *Lee v. Weisman*, 505 U.S.
10 577 (1992) found that there are "heightened concerns with protecting
11 freedom of conscience from subtle coercive pressure in the
12 elementary and secondary public schools," while also holding in
13 *Edwards v. Aguillard*, 482 U.S. 578 (1987) that the government
14 "should be particularly vigilant in monitoring compliance with the
15 Establishment Clause in the public-school context," when minors are
16 subjected to religious indoctrination with the perception of the
17 government's stamp of approval;

18 13. According to the United States Supreme Court in cases like
19 *Flast v. Cohen*, 392 U.S. 83 (1968), a taxpayer with a logical nexus
20 to a controversy involving a government actor's violation of the
21 Establishment Clause has standing to sue to enforce compliance;

22 14. The federal courts have held in cases like *Holloman v.*
23 *Harland*, 370 F.3 1252 (11th Cir. 2004), that neither emotional
24 appeals nor sincerity of belief can be used to usurp the

1 Establishment Clause of the First Amendment, and the evidence shows
2 that all policies that respect, favor, endorse, or promote critical
3 race theory in public schools are based on a series of emotional
4 appeals;

5 15. There has not been the promised equality and unity
6 cultivated by teaching critical race theory in public schools, but
7 instead, there has been division and an increase in racial tension
8 in an emotionally exploitative and intellectually dishonest manner
9 demonstrating that such policies are a sham that lack a primary
10 secular purpose;

11 16. Critical race theory is a non-secular divisive doctrine
12 that amounts to an attempt to justify practices that are
13 inconsistent with the peace and safety of this state by:

- 14 a. cultivating moral superiority complexes in observers
15 of critical race theory with the government's
16 endorsement at the taxpayer's expense,
- 17 b. leading to the social marginalization and even violent
18 oppression of non-observers of critical race theory,
19 and
- 20 c. conflicting with the neutral, non-controversial,
21 natural, secular, and self-evident truth that "all men
22 are created equal...endowed by their Creator with
23 certain unalienable rights, that among these are life,
24 liberty and the pursuit of happiness"; and

1 17. Pursuant to the police powers afforded to this state under
2 the Tenth Amendment to the United States Constitution, the
3 Legislature has a compelling reason to prevent the teaching of
4 divisive and controversial religious doctrines in public schools
5 that are calculated to emotionally exploit race and cultivate racial
6 tensions in the advancement of a narrow and exclusive religious
7 worldview that is questionably moral and perspectivevely implausible.

8 SECTION 2. AMENDATORY 70 O.S. 2021, Section 24-157, is
9 amended to read as follows:

10 Section 24-157. A. This act shall be known and may be cited as
11 the "Stop the Wrongs to Our Kids and Employees (Stop W.O.K.E.) Act.

12 B. As used in this act:

13 1. "Critical race theory" means a set of assertions and
14 unproven faith-based assumptions that form a doctrine, ideology,
15 dogma, and orthodoxy that is inseparably linked to the religion of
16 secular humanism. The term involves non-secular divisive doctrine
17 that includes, but is not limited to, the concepts described in
18 paragraph 1 of subsection D of this section;

19 2. "Emotional appeal" means a method of persuasion through
20 sentiment, not logic, designed to create an emotional response to
21 achieve certain ends;

22 3. "Lemon test" means a three-prong test originally created by
23 the United States Supreme Court and adopted by this state which is
24 used to determine whether government action is unconstitutional

1 under the Establishment Clause of the First Amendment to the United
2 States Constitution. Government action violates the Establishment
3 Clause and Article II, Section 5 of the Oklahoma Constitution if the
4 action fails to satisfy any of the prongs. The test requires that
5 state action or government policy:

6 a. have a valid secular purpose,

7 b. not have the effect of advancing, endorsing, or
8 inhibiting religion, and

9 c. not foster excessive entanglement with a particular
10 religion;

11 4. "Logical nexus" means at least some minimal, relevant,
12 legitimate, important, or rational connection and connotes a low-
13 threshold standard;

14 5. "Non-secular" means faith-based, not proven, predicated on
15 naked assertions, or emotional feelings, not self-evident objective
16 fact;

17 6. "Promote" means to advocate for, assist with, favor,
18 respect, endorse, encourage, or popularize through advertising or
19 publicity;

20 7. "Public School" means a public educational institution that
21 is maintained at public expense for the education of the children of
22 a community or district and that constitutes a part of a system of
23 free public education including primary and secondary schools from
24 grades prekindergarten through twelve. The term shall include

1 accredited nonpublic educational institutions including primary and
2 secondary schools from grades prekindergarten through twelve;

3 8. "Religion" means a set of unproven answers to the greater
4 questions like "why are we here," "what should we be doing as
5 humans," "how do we get our identity," and "what happens after
6 death". The term means a closed system and group or community that
7 is organized, full, and provides a comprehensive code by which
8 individuals may guide their daily activities. Religion involves an
9 ultimate concern or sincere belief and can be non-theistic or
10 theistic;

11 9. "Secular humanism" means a faith-based worldview that is
12 also referred to as postmodern-western-individualistic moral
13 relativism, expressive individualism, or antitheism and is often the
14 mirror opposite of theism. The term refers to a religion that
15 worships man as the source of all knowledge and truth. The term
16 includes a belief system that is centered on the unproven
17 assumptions that there are no moral absolutes and no one moral
18 doctrine should be used as the superior basis for law and policy,
19 except for the religious doctrines of secular humanism. The term
20 includes a series of unproven faith-based assumptions and naked
21 assertions that suggest that morality and truth are man-made
22 conventions and that at the heart of liberty is man's ability to
23 define his own meaning of the universe. The term refers to a
24 religion that tends to promote licentiousness and to justify

1 practices that are inconsistent with the peace and safety of the
2 state. The term refers to the belief that man is merely a bundle of
3 chemicals, animated pieces of meat, or accidental particles, that
4 nature is all there is, and that there is nothing after death.
5 Critical race theory is a doctrine, ideology, orthodoxy, and dogma
6 that is inseparably linked to this religion. The term refers to a
7 religion that has many different denominational sects and is
8 expressed in widely varying ways;

9 10. "Taxpayer standing" means the standing of a taxpayer to
10 file a lawsuit against a government actor that is directly or
11 symbolically engaging in practices that violate the Establishment
12 Clause of the First Amendment to the United States Constitution or
13 Article II, Section 5 of the Oklahoma Constitution after the
14 government actor actually or prospectively engaged in action that
15 potentially failed at least one prong of the lemon test. A taxpayer
16 shall have a logical nexus to a government actor's violation to
17 assert taxpayer standing. A person who pays sales tax in this state
18 can successfully assert this form of standing before the courts of
19 competent jurisdiction.

20 C. 1. No enrolled student of an institution of higher
21 education within The Oklahoma State System of Higher Education shall
22 be required to engage in any form of mandatory gender or sexual
23 diversity training or counseling; provided, voluntary counseling
24 shall not be prohibited. Any orientation or requirement that

1 presents any form of race or sex stereotyping or a bias on the basis
2 of race or sex shall be prohibited.

3 2. Pursuant to the provisions of the Administrative Procedures
4 Act, the Oklahoma State Regents for Higher Education shall
5 promulgate rules, subject to approval by the Legislature, to
6 implement the provisions of this subsection.

7 ~~B.~~ D. The provisions of this subsection shall not prohibit the
8 teaching of concepts that align to the Oklahoma Academic Standards.

9 1. No teacher, administrator or other employee of a school
10 district, charter school or virtual charter school shall require or
11 make part of a course the following concepts:

- 12 a. one race or sex is inherently superior to another race
13 or sex,
- 14 b. an individual, by virtue of his or her race or sex, is
15 inherently racist, sexist or oppressive, whether
16 consciously or unconsciously,
- 17 c. an individual should be discriminated against or
18 receive adverse treatment solely or partly because of
19 his or her race or sex,
- 20 d. members of one race or sex cannot and should not
21 attempt to treat others without respect to race or
22 sex,
- 23 e. an individual's moral character is necessarily
24 determined by his or her race or sex,

- 1 f. an individual, by virtue of his or her race or sex,
2 bears responsibility for actions committed in the past
3 by other members of the same race or sex,
4 g. any individual should feel discomfort, guilt, anguish
5 or any other form of psychological distress on account
6 of his or her race or sex, ~~or~~
7 h. meritocracy or traits such as a hard work ethic are
8 racist or sexist or were created by members of a
9 particular race to oppress members of another race,
10 i. the violent overthrow of the United States government
11 should be promoted,
12 j. this state or the United States is fundamentally or
13 irredeemably racist or sexist,
14 k. division between or resentment of a race, sex,
15 religion, creed, nonviolent political affiliation,
16 social class, or class of people should be promoted,
17 l. character traits, values, morals, or ethical codes can
18 be ascribed to a race or sex or to an individual
19 because of the individual's race or sex,
20 m. the rule of law does not exist but instead is a series
21 of power relationships and struggles among racial or
22 other groups,
23 n. all Americans are not created equal and are not
24 endowed by their creator with certain unalienable

1 rights including life, liberty, and the pursuit of
2 happiness, or

3 o. governments should deny to any person within the
4 government's jurisdiction the equal protection of the
5 law.

6 2. The State Board of Education shall promulgate rules, subject
7 to approval by the Legislature, to implement the provisions of this
8 subsection.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 24-157.1 of Title 70, unless
11 there is created a duplication in numbering, reads as follows:

12 A. Pursuant to the Establishment Clause of the First Amendment
13 to the United States Constitution and Article II, Section 5 of the
14 Oklahoma Constitution, a public school shall not include, as part of
15 a course of instruction or in a curriculum or instructional program,
16 or allow or force teachers or other employees of the public school
17 to use supplemental instructional materials that endorse, favor,
18 respect, or promote critical race theory because the policies fail
19 the Lemon test for:

20 1. Constituting non-secular shams that lack a primary secular
21 purpose;

22 2. Cultivating indefensible legal weapons against non-observers
23 of the religion of secular humanism; and

1 3. Having the effect of excessively entangling the government
2 with the religion of secular humanism.

3 B. The following persons may enforce the provisions of
4 subsection A of this section in a civil court of competent
5 jurisdiction:

6 1. A taxpayer of this state or a political subdivision of this
7 state who has taxpayer standing;

8 2. A parent or legal guardian who pays taxes in this state and
9 who has a student in a public school that has violated the
10 provisions of subsection A of this section has taxpayer standing;

11 and

12 3. A public school employee who is punished by a public school
13 for refusing to teach critical race theory to students.

14 C. A plaintiff who brings a civil action against a public
15 school for violating the provisions of subsection A of this section
16 may seek and be awarded the following by a court of competent
17 jurisdiction:

18 1. Attorney fees and costs;

19 2. Actual damages;

20 3. Injunctive relief; and

21 4. Other forms of equitable relief deemed appropriate.

22 D. A school official, officer, or employee of the state who
23 knowingly violates the provisions of subsection A of this section
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1 may be dismissed from the person's office or position, and the
2 person's employment may be terminated immediately.

3 E. Any public school official who violates the provisions of
4 subsection A of this section may be declared to be in violation of
5 their oath of office established under Article VI, Clause 3 of the
6 United States Constitution and subjected to declaratory relief for a
7 violation in a court of competent jurisdiction.

8 F. Sincerity of belief or emotional appeals shall not
9 constitute a valid defense for a violation of the provisions of
10 subsection A of this section.

11 G. Notwithstanding the provisions of subsection A of this
12 section to the contrary, the provisions of this section do not
13 prohibit a public school from including, as part of a course of
14 instruction or in a curriculum or instructional program, or from
15 allowing teachers in a public school to use supplemental
16 instructional materials that include:

17 1. The history of an ethnic group, as described in textbooks
18 and instructional materials adopted in accordance with approved
19 curriculum;

20 2. The impartial and neutral discussion of controversial
21 aspects of history;

22 3. The impartial and neutral instruction on the historical
23 oppression of a particular group of people based on race, ethnicity,
24 class, nationality, religion, or geographic region; or

1 4. Historical documents.

2 SECTION 4. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 24-157.2 of Title 70, unless
4 there is created a duplication in numbering, reads as follows:

5 A. Pursuant to the Free Exercise Clause of the First Amendment
6 to the United States Constitution and Article II, Section 5 of the
7 Oklahoma Constitution, a public school shall not discriminate
8 against any person for believing in or for failing to believe in the
9 plausibility of critical race theory.

10 B. A student or teacher who experiences discrimination by a
11 public school as described in subsection A of this section shall
12 have standing to file suit in a court of competent jurisdiction
13 where they can seek:

- 14 1. Injunctive relief;
- 15 2. Attorney fees and costs;
- 16 3. Actual damages; and
- 17 4. Other forms of relief deemed appropriate.

18 C. It shall be an absolute and affirmative defense in a civil
19 action brought pursuant to subsection A of this section that the
20 public school was acting in compliance with the Establishment Clause
21 of the First Amendment to the United States Constitution or Article
22 II, Section 5 of the Oklahoma Constitution or other existing state
23 and federal laws.

1 SECTION 5. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 24-157.3 of Title 70, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The Stop the Wrongs to Our Kids and Employees (Stop
5 W.O.K.E.) Act is constructed on the premise that:

6 1. The United States is a constitutional republic of which this
7 state is a part;

8 2. The United States Constitution is the supreme sovereign law
9 of this country that preempts all state and federal law;

10 3. The First Amendment to the United States Constitution
11 applies to the states through the Fourteenth Amendment to the United
12 States Constitution;

13 4. The Establishment Clause of the First Amendment to the
14 United States Constitution and Article II, Section 5 of the Oklahoma
15 Constitution were not merely designed to prevent the state from
16 respecting and promoting the doctrines of institutionalized
17 religions but those of non-institutionalized religions;

18 5. All members of the Legislature and all executive and
19 judicial officers are bound by oath or affirmation pursuant to
20 Article VI, Clause 3 of the United States Constitution to not create
21 or enforce policies that violate the Establishment Clause or the
22 Free Exercise Clause of the First Amendment to the United States
23 Constitution regardless of the member's or officer's party
24 affiliation or personal religious beliefs;

1 6. The Establishment Clause balanced with the Free Exercise
2 Clause of the First Amendment to the United States Constitution is
3 the controlling constitutional authority in informing this state on
4 how to respond and react to critical race theory;

5 7. Emotional appeals shall not be used to usurp the
6 Establishment Clause of the First Amendment to the United States
7 Constitution or Article II, Section 5 of the Oklahoma Constitution
8 in an effort to justify the government's creation or enforcement of
9 policies that respect, endorse, favor, or promote critical race
10 theory;

11 8. All policies put forth by public schools that respect,
12 favor, endorse, or promote critical race theory fail the lemon test
13 first established by the United States Supreme Court and are thereby
14 preempted by the Establishment Clause of the First Amendment to the
15 United States Constitution and Article II, Section 5 of the Oklahoma
16 Constitution in their making and enforcement and shall be enjoined
17 from enforcement because the policies:

- 18 a. constitute non-secular shams that lack a primary
19 secular purpose,
- 20 b. cultivate indefensible legal weapons against non-
21 observers of the religion of secular humanism, and
- 22 c. have the effect of excessively entangling the
23 government with the religion of secular humanism;

1 9. In the wake of policies in public schools that respect,
2 favor, endorse, or promote critical race theory, there has not been
3 the promised equality, unity, and tolerance but instead, there has
4 been:

- 5 a. the cultivation of moral superiority complexes in
6 observers of critical race theory, and
- 7 b. the social marginalization and oppression of the non-
8 observers of critical race theory; and

9 10. This state shall be particularly vigilant in monitoring
10 compliance with the Establishment Clause in the public school
11 context to protect minors from religious indoctrination with the
12 government's stamp of approval, especially when that religious
13 ideology promotes licentiousness or attempts to justify practices
14 that are inconsistent with the peace and safety of the state.

15 B. The Stop W.O.K.E. Act shall not be constructed as
16 prohibiting students or teachers from believing in or from refusing
17 to believe in the plausibility of critical race theory or practices
18 because such beliefs and practices are protected under the Free
19 Exercise Clause of the First Amendment to the United States
20 Constitution and under Article II, Section 5 of the Oklahoma
21 Constitution. The Stop W.O.K.E. Act shall be constructed on the
22 premise that protections of religious practices under the Free
23 Exercise Clause of the First Amendment to the United States
24 Constitution and Article II, Section 5 of the Oklahoma Constitution

1 are not absolute, and this state is authorized to regulate or
2 prohibit certain religious practices pursuant to its inherent police
3 powers afforded under the Tenth Amendment to the United States
4 Constitution if those practices promote licentiousness or are
5 inconsistent with the peace and safety of the state. Critical race
6 theory attempts to justify practices that are inconsistent with the
7 peace and safety of this state.

8 SECTION 6. This act shall become effective July 1, 2023.

9 SECTION 7. It being immediately necessary for the preservation
10 of the public peace, health, or safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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